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DEC 8 2004 8 PM 1 50  
TN REGULATORY AUTHORITY  
DOCKET ROOM  
December 8, 2004

Honorable Pat Miller, Chairman  
Tennessee Regulatory Authority  
ATTN: Sharla Dillon, Dockets  
460 James Robertson Parkway  
Nashville, TN 37243-5015

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law; Docket No. 04-00381

Dear Chairman Miller

Enclosed please find the original and 14 copies each of the following in the above-referenced matter: (1) Petition of KMC Telecom V, Inc. and KMC Telecom III, LLC for Leave to Intervene; (2) Petition of Nuvox, Inc. on Behalf of its Operating Entities, Nuvox Communications, Inc., and New South Communications Corp. for Leave to Intervene; (3) Petition of Xspedius Communications, LLC, on Behalf of Operating Subsidiaries Xspedius Management Company, Switched Services, LLC, and Xspedius Management Company of Chattanooga, LLC; and (4) Motion to Dismiss of KMC, NuVox/NewSouth, and Xspedius.

I am also enclosing my check in the amount of \$200.00 in payment of the filing fee for the petitions to intervene (divided as follows, \$50.00 for KMC; \$75.00 for NuVox/NewSouth; and \$75.00 for Xspedius).

Please return a date stamped copy of each pleading. Thank you for your assistance. If you have questions, please do not hesitate to contact me.

Sincerely,



H. LaDon Baltimore  
Counsel for Joint Petitioners

LDB/dcg  
Enclosures

cc Guy Hicks, Esq.  
Henry Walker, Esq.  
Ed Phillips, Esq.  
James Murphy, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

04 DEC 8 PM 1 53

IN RE:

PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS  
TO INTERCONNECTION AGREEMENTS  
RESULTING FROM CHANGES OF LAW

) TN REGULATORY AUTHORITY  
) DOCKET NO. 04-00381  
)  
)  
)

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PETITION OF XSPEDIUS COMMUNICATIONS, LLC, ON BEHALF OF  
OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT COMPANY,  
SWITCHED SERVICES, LLC, AND XSPEDIUS MANAGEMENT  
COMPANY OF CHATTANOOGA, LLC  
FOR LEAVE TO INTERVENE

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Xspedius Communications, LLC, on behalf of operating subsidiaries Xspedius Management Company, Switched Services, LLC, (Xspedius Switched) and Xspedius Management Company of Chattanooga, LLC (Xspedius Chattanooga, LLC) (collectively, Petitioners), pursuant to T.C.A. §4-5-310, petition the Tennessee Regulatory Authority (Authority) to grant them leave to intervene in the above-captioned proceeding and to participate as their interests may appear, and for grounds state that:

1. Xspedius Switched and Xspedius Chattanooga, LLC are limited liability companies formed under the laws of the State of Delaware, and having their principal place of business at 5555 Winshaven Boulevard, suite 300, O'Fallon, Missouri 63366. In Tennessee, Xspedius Switched is authorized to provide telecommunications service pursuant to Docket No. 02-00714, and Xspedius Chattanooga, LLC is authorized as a competitive access provider also pursuant to Docket No 02-00174.

2 The legal rights, duties, privileges, immunities, or other legal interests of Petitioners will be affected or determined by the outcome of this proceeding.

3. The participation of Petitioners will not impair the interest of justice or the orderly and prompt conduct of the proceeding.

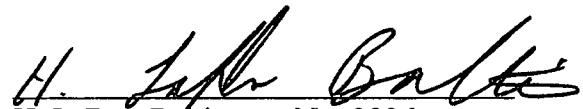
4. Petitioners seek to intervene and participate as their interests may appear.

Premises considered, the Petitioners pray that:

1. An order be entered allowing Petitioners to intervene and participate in this proceeding as their interests may appear and to receive copies of any notices, orders, or other documents that are filed herein; and

2. The Petitioners have such other, further, and general relief as the justice of this cause may entitle them to receive.

Respectfully submitted,



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*Attorneys for Petitioner*

**Certificate of Service**

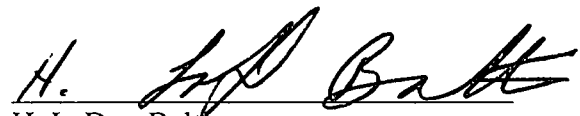
The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 8<sup>th</sup> day of December, 2004

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
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H. LaDon Baltimore

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS  
TO INTERCONNECTION AGREEMENTS  
RESULTING FROM CHANGES OF LAW**

04 DEC 8 PM 1 52

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)  
) **DOCKET NO: 04-00381**  
) IN RE: PETITION TO ESTABLISH  
) DOCKET ROOM  
)  
)

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**PETITION OF KMC TELECOM V, INC. AND KMC TELECOM III, LLC  
FOR LEAVE TO INTERVENE**

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KMC Telecom V, Inc. and KMC Telecom III, Inc. (collectively, Petitioners), pursuant to T.C.A. §4-5-310, petition the Tennessee Regulatory Authority (Authority) to grant them leave to intervene in the above-captioned proceeding and to participate as their interests may appear, and for grounds state that:

1. Petitioners are Delaware corporations which are wholly-owned subsidiaries of KMC Telecom Holdings, Inc., a publicly-held Delaware corporation. KMC III is duly qualified to do business in Tennessee and holds a certificate of public convenience and necessity authorizing it to provide interLATA, interexchange telecommunications services and to operate as a Competing Telecommunications Service Provider in intrastate commerce in the State of Tennessee pursuant to Docket No. 99-00211, July 28, 1999. Likewise, the Authority granted KMC V a certificate of convenience and necessity to provide competitive resold and facilities-based local exchange and resold interexchange telecommunications service throughout the State of Tennessee on May 4, 2001, in Docket No. 00-1123.

2. The legal rights, duties, privileges, immunities, or other legal interests of Petitioners will be affected or determined by the outcome of this proceeding.

3 The participation of Petitioners will not impair the interest of justice or the orderly and prompt conduct of the proceeding.

4 Petitioners seek to intervene and participate as their interests may appear.

Premises considered, the Petitioners pray that:

1. An order be entered allowing Petitioners to intervene and participate in this proceeding as their interests may appear and to receive copies of any notices, orders, or other documents that are filed herein; and

2. The Petitioners have such other, further, and general relief as the justice of this cause may entitle them to receive.

Respectfully submitted,



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[ghargrove@kelleydrye.com](mailto:ghargrove@kelleydrye.com)

*Attorneys for Petitioner*

**Certificate of Service**


The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 8<sup>th</sup> day of December, 2004.

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H. LaDon Baltimore

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE

PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS  
TO INTERCONNECTION AGREEMENTS  
RESULTING FROM CHANGES OF LAW

99-00806 6 PM  
TN REGULATORY AUTHORITY  
DOCKET NO. 04

PETITION OF NUVOX, INC. ON BEHALF OF ITS OPERATING ENTITIES  
NUVOX COMMUNICATIONS, INC, AND  
NEWSOUTH COMMUNICATIONS CORP.  
FOR LEAVE TO INTERVENE

NuVox Communications, on behalf of its operating entities, NuVox Communications, Inc (NuVox) and NewSouth Communications Corp. (NewSouth) (collectively, Petitioners), pursuant to T.C.A. §4-5-310, petition the Tennessee Regulatory Authority (Authority) for leave to intervene in the above-captioned proceeding and to participate as their interests may appear, and for grounds state that:

1. NuVox is a competitive local exchange carrier formed under the laws of the State of South Carolina, and having its principal place of business at 301 N. Main Street, S Greenville, South Carolina 29601. NuVox currently provides or is authorized to provide local and long distance telecommunications services in several states. In Tennessee, NuVox is authorized by the Authority to provide a full array of telecommunications services. See Docket No. 99-00806, dated February 22, 2000.

2. NewSouth is a competitive local exchange carrier formed under the laws of the State of Delaware, and having its principal place of business at Two North Main Street, Greenville, South Carolina 29601. NewSouth currently provides or is authorized to provide local and long distance telecommunications services in several states. In Tennessee, NewSouth is authorized by the Authority to provide a full array of telecommunications services. See Docket No. 99-00806, dated February 22, 2000.

proceedings  
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2.

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

JUL 8 PM 1 52

**IN RE:**

**PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS  
TO INTERCONNECTION AGREEMENTS  
RESULTING FROM CHANGES OF LAW**

)  
)  **TN REGULATORY AUTHORITY**  
) **DOCKET NO. 04-00381**  
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)

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**PETITION OF NUVOX, INC. ON BEHALF OF ITS OPERATING ENTITIES  
NUVOX COMMUNICATIONS, INC, AND  
NEWSOUTH COMMUNICATIONS CORP.  
FOR LEAVE TO INTERVENE**

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NuVox Communications, on behalf of its operating entities, NuVox Communications, Inc. (NuVox) and NewSouth Communications Corp. (NewSouth) (collectively, Petitioners), pursuant to T.C.A. §4-5-310, petition the Tennessee Regulatory Authority (Authority) to grant them leave to intervene in the above-captioned proceeding and to participate as their interests may appear, and for grounds state that:

1. NuVox is a competitive local exchange carrier formed under the laws of the State of South Carolina, and having its principal place of business at 301 N. Main Street, Suite 5000, Greenville, South Carolina 29601. NuVox currently provides or is authorized to provide local and long distance telecommunications services in several states. In Tennessee, NuVox is authorized by the Authority to provide a full array of telecommunications services pursuant to Docket No. 99-00806, dated February 22, 2000

2. NewSouth is a competitive local exchange carrier formed under the laws of the State of Delaware, and having its principal place of business at Two North Main Street, Greenville, South Carolina 29601. NewSouth currently provides or is authorized to provide

voice and data, local, long distance, and bundled telecommunications service in several state. In Tennessee, NewSouth is authorized by the Authority to provide intrastate telecommunications service pursuant to Docket No. 98-00325, dated November 24, 1998.

3. The legal rights, duties, privileges, immunities, or other legal interests of Petitioners will be affected or determined by the outcome of this proceeding.

4. The participation of Petitioners will not impair the interest of justice or the orderly and prompt conduct of the proceeding.

5. Petitioners seek to intervene and participate as their interests may appear.

Premises considered, the Petitioners pray that:

1. An order be entered allowing Petitioners to intervene and participate in this proceeding as their interests may appear and to receive copies of any notices, orders, or other documents that are filed herein; and

2. The Petitioners have such other, further, and general relief as the justice of this cause may entitle them to receive.

Respectfully submitted,



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*Attorneys for Petitioner*

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 8<sup>th</sup> day of December, 2004.

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:

**PETITION TO ESTABLISH GENERIC  
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RESULTING FROM CHANGES OF LAW**

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) **DOCKET NO. 04-00381**  
) TN REGULATORY AUTHORITY  
) DOCKET ROOM  
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**MOTION TO DISMISS OF KMC, NUVOX/NEW SOUTH,  
AND XSPEDIUS<sup>1</sup>**

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KMC, NuVox/NewSouth, and Xspedius (collectively "Joint Arbitration Petitioners"), through their undersigned counsel, respectfully submit this Motion to Dismiss in response to the recent pleadings filed with this Authority by BellSouth Telecommunications, Inc. ("BellSouth") requesting that the Authority establish a generic proceeding to examine issues related to BellSouth's obligations to provide unbundled network elements.<sup>2</sup>

Joint Arbitration Petitioners have a pending arbitration proceeding with BellSouth in Docket No. 04-00046. As contemplated by Sections 251 and 252 of the Communications Act of 1934, as amended ("Federal Act"), these parties negotiated first with BellSouth and then sought arbitration of issues that could not be resolved through voluntary negotiation. The parties, through voluntary negotiation, have resolved many issues related to BellSouth's obligations to provide unbundled network elements (including several that BellSouth seeks to be resolved in a generic proceeding). They have been unable to resolve and have requested Authority arbitration of others.

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<sup>1</sup> NuVox Communications, Inc. on behalf of its operating entities NuVox Communications, Inc. and NewSouth Communications Corporation (collectively "NuVox/NewSouth"), KMC Telecom V, Inc. and KMC Telecom III, LLC (collectively "KMC"), and Xspedius Communications, LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Chattanooga, LLC (collectively "Xspedius")

<sup>2</sup> Joint Arbitration Petitioners understand that CompSouth has filed in opposition to BellSouth's petition and motion filed in the above-captioned docket. Joint Arbitration Petitioners do not join CompSouth's filing, but instead file separately so that they may focus on the specific and unique concerns raised by their pending arbitration and abeyance agreement with BellSouth.

On October 15, 2004, Joint Arbitration Petitioners filed jointly with BellSouth a revised issues matrix incorporating nine new issues related to the post-*USTA II* regulatory framework.<sup>3</sup> The revised issues matrix, adding new issues to the pending arbitration, was the result of a voluntarily negotiated agreement by Joint Arbitration Petitioners with BellSouth which was memorialized in a joint motion for abeyance filed with the Authority on July 15, 2004 and incorporated into the Authority's July 16, 2004 Order granting the joint motion for abeyance. As stated in the Authority's Order, Joint Arbitration Petitioners reached an agreement with BellSouth wherein Joint Arbitration Petitioners would not amend their existing interconnection agreement UNE provisions (Attachment 2), but would rather operate pursuant to those provisions until the parties were able to move into new interconnection agreements (incorporating the post-*USTA II* regulatory framework) that result from the conclusion of the arbitration in Docket No. 04-00046. Thus, Joint Arbitration Petitioners respectfully request the Authority to be mindful of that agreement memorialized in its July 16, 2004 Order in Docket No. 04-00046 and to clarify in any order (if any) resulting from the above-captioned generic docket, that such order does not alter their agreement with BellSouth to operate under and not to amend their existing interconnection agreements, but to instead address (and arbitrate) changes-of-law associated with the post-*USTA II* regulatory framework in their new interconnection agreements already set for arbitration by this Authority.<sup>4</sup>

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<sup>3</sup> Of the nine Supplemental Issues added, one is a modification of an issue included in the original set of issues and another one (S-8) has been resolved

<sup>4</sup> If the Authority were to proceed with a generic proceeding and some of the issues set for arbitration in *Docket No. 04-00046* were deferred to such a generic docket for resolution, the Authority would need to establish an appropriate procedure for folding the results of the generic docket back into the arbitration docket. In particular, such procedure would need to provide an opportunity to establish contract language that reflects any Authority decision in such a generic proceeding while not conflicting with language established as a result of voluntary negotiation or Authority resolution of issues in the arbitration docket. Notably, BellSouth attaches to its petition an entirely new "Attachment 2." Joint Arbitration Petitioners believe that the Authority should reject that attachment and require (if it were at some point to proceed with a generic) BellSouth to re-file issue specific language proposals in a matrix that features alongside those proposals the language BellSouth seeks to replace from an existing agreement or the language proposed by various CLECs, as a result of efforts to negotiate or arbitrate such provisions. Not every provision of Attachment 2 was called into question by *USTA II* and the decisions that follow in its wake (the FCC Interim Rules Order and the widely anticipated, so-called FCC Final Rules Order)

Joint Arbitration Petitioners note that, at a November 19, 2004 Pre-Hearing Conference, Hearing Officer Stone issued an oral ruling denying the addition of issues related to the post-*USTA II* regulatory framework to the parties' arbitration issues matrix. Joint Arbitration Petitioners respectfully disagree with that decision and will state the basis for that disagreement in a petition for reconsideration or review that Joint Arbitration Petitioners currently plan to file after Hearing Officer Stone's ruling is memorialized in a written order. That said, even if the so-called Supplemental Issues are not admitted in the arbitration proceeding, there still are overlapping issues between the arbitration and proposed generic proceeding. Moreover, the proposed generic proceeding does not encompass all of the Supplemental Issues raised. Thus, it does not provide an adequate alternative for that and a host of other reasons that would need to be addressed prior to moving forward with any generic proceeding.

Faced with conflicting sets of issues and concerns, as well as an array of differently situated carriers, the last thing the Authority should do is to rush headlong into the generic proceeding BellSouth seeks to prematurely force down the throats of its competitors. As explained herein, the Act requires negotiations followed by arbitration. If the Joint Arbitration Petitioners' arbitration concludes without the resolution of the so-called Supplemental Issues, the Authority and the industry is not faced with a crisis, as BellSouth disingenuously suggests in its remarkable "emergency" motion. Existing interconnection agreements will not magically expire or be transformed at the end of the so-called Interim Period. Additional procedures could be used to make the agreement being arbitrated in Docket 04-00046 consistent with the latest federal and state laws. Moreover, the FCC claims to be on the eve of issuing a comprehensive new unbundling under on remand from the DC Circuit. The parties should engage in good faith negotiations regarding the implementation of that order, before the Authority commits to devote significant resources to any generic proceeding. Finally, a proceeding of the kind contemplated by BellSouth's petition certainly could not be handled in a one day hearing (as BellSouth

suggests),<sup>5</sup> if every party is to be able to have ample opportunity to be heard (as BellSouth claims would be the case).

Joint Arbitration Petitioners understand that BellSouth sometimes insists that the Authority arbitrate the same or similar issues repetitively, especially when the Authority's rulings depart from those sought by BellSouth. Different CLECs also can ask the Authority to resolve the same or similar issues in separate arbitration proceedings. Thus, it may be prudent for the Authority to bar BellSouth (or any party) from forcing the re-arbitration of issues on which that same party already has lost and to consolidate (in a manner that prejudices no individual party) arbitration of the same or similar issues raised in separate arbitrations. It may also be appropriate for the Authority to employ a generic proceeding to address issues of import to a variety of carriers who have interconnection agreements with BellSouth. For example, the Authority has conducted generic TELRIC rate and performance measurements/SEEMs proceedings. The results of these proceedings have subsequently been incorporated into existing agreements by amendment and into new agreements by the negotiation arbitration process.

As a general principle, however, the Authority should require, as the Federal Act does, that parties negotiate first and arbitrate only if such negotiations fail. Indeed, BellSouth shared with Joint Arbitration Petitioners a preliminary version of the matrix it was preparing for this proceeding (it did so with other CLECs as well) and it was immediately apparent that the majority of the issues proposed already were resolved vis-a-vis BellSouth and Joint Arbitration Petitioners through voluntary negotiations. Other issues had never been negotiated. And still other issues that were raised and incorporated into the matrix filed in the arbitration docket were

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<sup>5</sup> In Docket No. 04-00046, BellSouth has filed nearly 50 pages of testimony related to the Supplemental Issues – which represent merely a subset of the issues raised in its proposed issues matrix for the generic proceeding. Joint Arbitration Petitioners have filed nearly 100 pages of testimony on those same issues. Roughly 20 more pages of testimony have been filed by the parties on the issue of EEL audits – another issue raised by BellSouth in its proposed generic petition. Thus, BellSouth's assertion that there will not be a need for substantial testimony and anything more than a one day hearing is not credible.

not raised by BellSouth in its proposed list of issues for a generic docket.<sup>6</sup> Notably, BellSouth filed its proposed contract language in this proceeding *before* it had proposed similar language to the Joint Arbitration Petitioners as part of their ongoing arbitration. Thus, with respect to the Joint Arbitration Petitioners, and likely many others, BellSouth's representation that it has been unable to agree on language with many CLECs (BellSouth Petition at para. 5) should certainly have been accompanied by the admission that BellSouth simply had not tried, but instead was trying to upend statutory and contractual negotiations requirements.

At bottom, the Authority generally should not endeavor to encompass issues in a generic proceeding that are more likely to be the subject of negotiated resolution. At the very least, the Authority should order BellSouth to first abide by statutory and contractual negotiation requirements.

Joint Arbitration Petitioners do note, however, that, on some issues, negotiations are almost certain to fail. Issues surrounding this Authority's power to require unbundling in the absence of federal rules likely fall into this category. Joint Arbitration Petitioners already have identified such issues in their own arbitration proceeding. These issues deal with the Authority's power to order the rates, terms and conditions for unbundling of a full array of network elements under state law, as well as under Sections 251 and 271 of the Federal Act. In their pending arbitration, Joint Arbitration Petitioners maintain that this Authority has ample authority to order unbundling of a full array of network elements in the absence of or in conjunction with FCC unbundling rules. These issues, along with pricing issues related thereto may eventually be among those more efficiently handled in a consolidated or generic proceeding.<sup>7</sup>

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<sup>6</sup> Thus, BellSouth's petition is not only improper and premature, it also is incomplete. If and when the Commission elects to address the issues raised by BellSouth, Joint Arbitration Petitioners request the opportunity to challenge specific issues raised by BellSouth and the opportunity to raise additional issues not identified in BellSouth's petition.

<sup>7</sup> Joint Arbitration Petitioners note that BellSouth asserts that "everyone will have an opportunity to be heard" in the generic proceeding it requests. BellSouth Petition at para. 6. After fighting (with only mixed success) a series of BellSouth filings designed to ensure that each of the Joint Arbitration Petitioners could not be heard in their own arbitration proceeding, Joint Arbitration Petitioners view BellSouth's assertion with a high degree of skepticism. In any generic proceeding, the Authority should adopt procedures to ensure that individual CLECs have the opportunity to participate and present witnesses freely (which may include independent presentations, group presentations or some combination thereof selected by an individual CLEC).



One thing that is absolutely certain, however, is that parties cannot effectively negotiate (and this Authority cannot effectively arbitrate) with respect to federal law that does not yet exist. It is expected that the FCC will adopt new so-called "final" unbundling rules within months, if not weeks. It is not at all clear what legal requirements will be adopted or whether those requirements will be voluntarily translated into negotiated contract language or whether arbitration issues will result. If past FCC UNE orders serve as any indication, the next one will likely have some aspects that will be voluntarily translated into contract language and others that will result in arbitration issues. The results are likely to vary among CLECs.

Expending resources in an attempt to resolve these issues now will be wasteful and inefficient. Although Joint Arbitration Petitioners, pursuant to their arbitration abatement agreement with BellSouth, agreed to identify a general "final" FCC unbundling rules issue in their own arbitration, their position is that parties will need to negotiate after those rules are released and should later proceed with arbitration of specific issues they are unable to resolve through negotiation. Given the uncertain timing of the release of the FCC's new rules, it is unclear whether such issues will be able to be addressed at the arbitration hearing or whether subsequent procedures will have to be adopted to address these issues.

WHEREFORE, Joint Arbitration Petitioners respectfully request that the Tennessee Regulatory Authority dismiss the petition filed by BellSouth and decline to convene a contested case.

Respectfully submitted,



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Counsel for KMC, NuVox/NewSouth  
and Xspedius

**Certificate of Service**

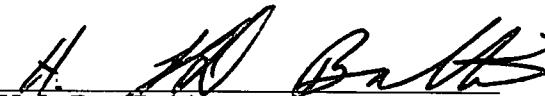
The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 8<sup>th</sup> day of December, 2004.

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